1990

State of Utah v. Wilfred A. Vigil Jr. : Petition for Rehearing

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff-Appellee,	:	Case No. 900166
v.	:	
WILFRED A. VIGIL, JR.,	:	Category No. 2
Defendant-Appellant.	:	

PETITION FOR REHEARING

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PETITION FOR REHEARING

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STATEMENT OF ISSUES PRESENTED ON PETITION FOR REHEARING

The sole issue presented in this petition for rehearing is whether the Court overlooked relevant authority and misapplied the law in concluding that attempted depraved indifference murder does not exist in Utah because the "knowing" mental state required for depraved indifference murder is not sufficient under Utah's attempt statute.

STATEMENT OF THE CASE

Defendant, Wilfred A. Vigil, Jr., was charged with one count of second degree murder, a first degree felony, under Utah Code Ann. § 76-5-203(1)(a)-(c) (1990), and two counts of attempted second degree murder, a second degree felony, under Utah Code Ann. §§ 76-5-203(1)(a)-(c) and 76-4-101 (1990) (R. 6-8).

Defendant moved to dismiss the attempted second degree murder counts that were based on the depraved indifference alternative defined in section 76-5-203(1)(c) (R. 42-43). The

trial court denied defendant's motion.

Defendant filed a petition for permission to appeal, requesting review of the trial court's denial of the motion to dismiss (R. 87-93). This Court granted the petition.

On September 3, 1992, the Court issued an opinion which held that attempted depraved indifference murder does not exist in Utah because the "knowing" mental state required for depraved indifference murder is not sufficient under Utah's attempt statute. State v. Vigil, No. 900166 (Utah Sept. 3, 1992) (a copy is contained in the addendum to this petition).

STATEMENT OF FACTS

The State agrees with the statement of facts contained in the Court's opinion. Vigil, slip op. at 1-2.

SUMMARY OF ARGUMENT

In holding that attempted depraved indifference murder does not exist in Utah because a knowing mental state is not sufficient under Utah's attempt statute, the Court overlooked substantial authority from the Model Penal Code, the Utah Code in general, and its own case law.

The Model Penal Code, upon which Utah's attempt statute is patterned, clearly adopts the view that an intentional or knowing mental state is sufficient for attempt. Both the legislature and this Court have recognized, particularly in the homicide context, that the intentional and knowing mental states are equivalent and equally culpable. Therefore, it is unreasonable to interpret the term "intent," as it is generically

used in Utah Code Ann. § 76-4-101(2) (1990), to limit the reach of the attempt statute to offenses that require an intentional mental state.

Consistent with the Model Penal Code and the acknowledgement by the legislature and this Court that the intentional and knowing mental states are equivalent and equally culpable, the fairest interpretation of Utah's attempt statute is that one can attempt to commit crimes that require either an intentional or knowing mental state. Accordingly, attempted depraved indifference murder exists in Utah.

INTRODUCTION

A petition for rehearing is appropriate when the Court has overlooked relevant authority or misapplied the law. See Cummins v. Nielson, 42 Utah 157, 172-73, 129 P. 619, 624 (1913). The argument portion of this brief will demonstrate that the State's petition for rehearing is properly before the Court and should be granted.

ARGUMENT

IN HOLDING THAT ATTEMPTED DEPRAVED INDIFFERENCE MURDER DOES NOT EXIST IN UTAH, THE COURT OVERLOOKED RELEVANT AUTHORITY AND MISAPPLIED THE LAW

The Court correctly stated the issue presented in this case: "We are asked to determine whether proof of the 'knowing' mental state required for depraved indifference homicide under section 76-5-203(1)(c) of the Code is sufficient to satisfy the mental state required by Utah's attempt statute found in section 76-4-101." Vigil, slip op. at 2. It then construed section 76-

4-101(2) as limiting the reach of the attempt provision to offenses that require an "intentional" mental state; one may not be convicted of an attempt if the underlying or target offense requires only a "knowing" mental state (as does depraved indifference murder). Id. at 8-9. The Court specifically rejected the State's argument that the word "intent" in section 76-4-101(2) be interpreted to mean an intentional mental state or one that is equivalent thereto (i.e., knowing mental state). Id. at 8.

The Court reached its conclusion that a "knowing" mental state is insufficient despite acknowledging that the Model Penal Code's attempt provision, upon which Utah's attempt statute is patterned, "requires either intentional conduct or the belief that the actor's conduct will result in the proscribed act." Id. at 6. Indeed, the Model Penal Code clearly adopts the view that a "knowing" mental state is sufficient for attempt, as illustrated in the following comment:

> Subsection (1)(b) [of § 5.01] provides that when causing a particular result is an element of the crime, as in homicide cases . . . ., an actor commits an attempt when he does or omits to do anything with the purpose of causing "or with the belief that it will cause" such result without further conduct on his part. Thus, a belief that death will ensue from the actor's conduct . . . will suffice, as would a purpose to bring about those results. If, for example, the actor's purpose were to demolish a building and, knowing that persons were in the building and they would be killed by the explosion, he nevertheless detonated a bomb that turned out to be defective, he could be prosecuted for attempted murder even though it was no part of his purpose that the inhabitants of the

building would be killed.

> It is difficult to say what the decision would be under prevailing attempt principles in a case of this kind. It might be held that the actor did not specifically intend to kill the inhabitants of the building; on the other hand, the concept of "intent" has always been an ambiguous one and might be thought to include results that the actor believed to be the inevitable consequence of his conduct. In any event, the inclusion of such conduct as the basis for liability under Subsection (1)(b) is based on the conclusion that the manifestation of the actor's dangerousness is just as great -- or very nearly as great -- as in the case of purposive conduct. In both instances a deliberate choice is made to bring about the consequence forbidden by the criminal laws, and the actor has done all within his power to cause this result to occur. The absence of any desire that the result occur is not, under the circumstances, a sufficient basis for differentiating between the two types of conduct involved.

1 Amer. L. Inst., Model Penal Code and Commentaries, 304-05 (1985).

The Model Penal Code's definition of "intent" as including both intentional (or "purposive") and knowing conduct is consistent with the generally accepted definition of that term in the criminal law. Black's Law Dictionary 373 (6th unabr. ed. 1990) defines "criminal intent" as follows:

> The intent to commit a crime; malice, as evidenced by a criminal act; an intent to deprive or defraud the true owner of his property. *Includes those consequences which represent the very purpose for which an act is done, regardless of the likelihood of occurrence, or are known to be substantially certain to result, regardless of desire.*

[Emphasis added.] In short, "criminal intent" includes

intentional *and* knowing mental states.

In light of the Model Penal Code's definition of "intent" and the generally accepted definition of "intent" in the criminal law, the Court's narrow interpretation of that term as it is generically used in section 76-4-101(2) is unwarranted. The Court erroneously considered itself bound to define "intent" as used in subsection (2) in the same manner that "intentionally, or with intent" are defined in Utah Code Ann. § 76-2-103(1) (1990). The terms appear in entirely different contexts and plainly refer to different concepts.

Section 76-2-103(1) defines the intentional mental state for purposes of specific conduct designated as criminal throughout the Code. The section provides meaning for the terms "intentionally, or with intent" when those terms are used to define the mental state for the conduct associated with a particular crime. See, e.g., Utah Code Ann. § 76-6-103(1) (1990) ("A person is guilty of aggravated arson if by means of fire or explosives he intentionally and unlawfully damages . . . .").

On the other hand, the term "intent" is used generically in section 76-4-101(2). It does not define the mental state for a particular crime. Rather, it refers generically to the "criminal intent" required for the underlying or target offense attempted by the actor (which, of course, is separately defined elsewhere in the Code). The generic definition of "intent" in the criminal law is that contained in Black's Law Dictionary and adopted by the Model Penal Code (i.e.,

intentional or knowing).

Furthermore, defining "intent" as used in section 76-4-101(2) to include both intentional and knowing mental states is consistent with the obvious legislative conclusion that those mental states, while distinct, are equally culpable. See, e.g., Utah Code Ann. §§ 76-5-202(1) (aggravated murder if actor "intentionally or knowingly causes death of another") and 76-5-203 (murder if actor "intentionally or knowingly causes the death of another") (Supp. 1992); Utah Code Ann. §§ 76-5-301(1) ("A person commits kidnapping when he intentionally or knowingly . . . ."), § 76-9-301 ("A person commits cruelty to animals if he intentionally or knowingly . . . .") (1990). For criminal homicide, this Court has repeatedly recognized that the "knowing" mens rea for depraved indifference murder is "'*equivalent* to a "specific intent" [or a purpose] to kill.'" State v. Standiford, 769 P.2d 254, 261 (Utah 1988) (quoting State v. Bolsinger, 699 P.2d 1214, 1220 (Utah 1985)). Given the clear recognition by both the legislature and this Court that the intentional and knowing mental states are equivalent, it is unreasonable to conclude that the legislature intended to limit the scope of the attempt provision to crimes that require intentional conduct, and to exclude those that require knowing conduct.

Indeed, even this Court could not completely accept its narrow reading of section 76-4-101(2). In footnote 5 of its opinion, where State v. Maestas, 652 P.2d 903 (Utah 1982), is discussed, the Court noted that "Maestas is still good law

insofar as it authorizes prosecution for attempted aggravated murder under the intentional or *knowing* formulation of section 76-5-202(1) or attempted murder under the intentional or *knowing* formulation of section 76-5-203(1)(a)." Vigil, slip op. at 8 n.5 (emphasis added). Retention of Maestas for that proposition simply cannot be reconciled with the Court's holding that a "knowing" mental state is not sufficient under the attempt statute.

In sum, the most reasonable reading of Utah's attempt statute is that one can attempt to commit crimes that require either an intentional or knowing mental state. Accordingly, attempted depraved indifference murder exists in Utah.

CONCLUSION

Based on the foregoing argument, the Court should grant rehearing and modify its opinion to conform to the fairest reading of Utah's attempt statute and this Court's own decisions, particularly Standiford and Maestas. Utah R. App. P. 35(c).

The State certifies that this petition is presented in good faith and not for delay.

RESPECTFULLY submitted this 17th day of September, 1992.

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CERTIFICATE OF MAILING

I hereby certify that four true and accurate copies of the foregoing Petition for Rehearing were mailed, postage prepaid, to Joan C. Watt, Salt Lake Legal Defender Assoc., Attorney for Defendant, 424 East 500 South, Suite 300, Salt Lake City, Utah 84111, this 17th day of September, 1992.

David B. Thompson

ADDENDUM

IN THE SUPREME COURT OF THE STATE OF UTAH

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State of Utah,
Plaintiff and Appellee,

v.

Wilfred A. Vigil, Jr.,
Defendant and Appellant.

No. 900166

F I L E D
September 3, 1992

Geoffrey J. Butler, Clerk

Third District, Salt Lake County
The Honorable Raymond S. Uno

Attorneys: R. Paul Van Dam, David B. Thompson, Salt Lake City, for plaintiff
James C. Bradshaw, Joan C. Watt, Salt Lake City, for defendant

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ZIMMERMAN, Justice:

Wilfred A. Vigil, Jr., appeals from a trial court order denying a motion he directed against two counts of an information filed against him. He moved to amend one count of attempted second degree murder and to dismiss a second count of attempted second degree murder. The sole question presented on appeal is whether the trial court correctly ruled that Vigil could be prosecuted for attempted second degree murder under the depraved indifference alternative of section 76-5-203(1)(c) of the Code. Utah Code Ann. § 76-5-203(1)(c) (1990) (amended 1991).[1] We hold that Utah does not recognize attempted depraved indifference homicide and reverse the trial court order denying Vigil's motion.

Because the facts are unimportant to the issue before us, we will summarize them briefly. Vigil was charged with one count of second degree murder, a first degree felony, id. § 76-5-203(1)-(2), and two counts of attempted second degree murder, a second degree felony, id. §§ 76-5-203(1), -4-101,

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[1] In 1991, the legislature changed "second degree murder" to simply "murder" and "first degree murder" to "aggravated murder." 1991 Utah Laws ch. 10, §§ 7-9 (codified as amended Utah Code Ann. §§ 75-5-201 to -203 (Supp. 1992)).

-4-102(2). These counts arose out of his allegedly shooting a rifle into a crowd on State Street in Salt Lake City. The shooting resulted in the death of one person and the wounding of two others. Before trial, Vigil moved to amend one count of the information and dismiss another. The aim of the motion was to delete from the information anything that would allow the jury to find him guilty of attempted depraved indifference homicide. The trial court denied the motion, whereupon Vigil petitioned this court for permission to make an interlocutory appeal. We granted his request and now consider the correctness of the trial court's ruling.

We first state the standard of review. The question of whether Utah recognizes attempted depraved indifference homicide is purely a matter of statutory interpretation. Therefore, we review the trial court's ruling for correctness and give no deference to its conclusions. State v. Petersen, 810 P.2d 421, 424 (Utah 1991); City of Monticello v. Christensen, 788 P.2d 513, 516 (Utah), cert. denied, 111 S. Ct. 120 (1990); Provo City Corp. v. Willden, 768 P.2d 455, 456 (Utah 1989).

The issue before us is narrow. We are asked to determine whether proof of the "knowing" mental state required for depraved indifference homicide under section 76-5-203(1)(c) of the Code is sufficient to satisfy the mental state required by Utah's attempt statute found in section 76-4-101. If we find that the "knowing" mental state required for depraved indifference homicide is sufficient to satisfy the attempt statute, the State will be able to prosecute a defendant for attempt to commit depraved indifference homicide.

We begin with the two statutes. The first is the second degree murder statute, which sets out several alternative formulations of second degree murder. Utah Code Ann. § 76-5-203(1) (1990) (amended 1991). The formulation we are concerned with is subparagraph (1)(c), the depraved indifference formulation. Subparagraph (1)(c), as construed by this court in State v. Standiford, 769 P.2d 254, 263-64 (Utah 1988), and State v. Fontana, 680 P.2d 1042, 1046-47 (Utah 1984), provides that a defendant may be convicted of second degree murder if he or she killed another with a "knowing" mental state, i.e., if the defendant knew his or her conduct created a grave risk of death to another.[2]

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[2] In Standiford, we held that to convict a defendant of depraved indifference homicide, the jury must find "(1) that the defendant acted knowingly (2) in creating a grave risk of death, (3) that the defendant knew the risk of death was grave, (4) which means a highly likely probability of death, and (5) that the conduct evidenced an utter callousness and indifference toward human life." 769 P.2d at 264.

The other statute of concern is the attempt statute, section 76-4-101. The mental state required by the attempt statute is found in the first two paragraphs, as indicated by emphasis below:

> (1) For purposes of this part a person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for the commission of the offense, he [or she] engages in conduct constituting a substantial step toward commission of the offense.
>
> (2) For purposes of this part, conduct does not constitute a substantial step unless it is strongly corroborative of the actor's intent to commit the offense.
>
> (3) No defense to the offense of attempt shall arise:
>
> (a) Because the offense attempted was actually committed; or
>
> (b) Due to factual or legal impossibility if the offense could have been committed had the attendant circumstances been as the actor believed them to be.

Utah Code Ann. § 76-4-101 (emphasis added).

To determine whether the legislature intended to recognize attempted depraved indifference homicide, we begin with the statutes' plain language. We will resort to other methods of statutory interpretation only if we find the language of the statutes to be ambiguous. See Shurtz v. BMW of N. Am., Inc., 814 P.2d 1108, 1112 (Utah 1991); Bonham v. Morgan, 788 P.2d 497, 500 (Utah 1989) (per curiam).

Paragraph (1) of the attempt statute provides that an attempt can occur whenever the actor acts with the "kind of culpability otherwise required" for the completed crime and his or her act is a "substantial step" toward committing the crime. Utah Code Ann. § 76-4-101(1). Because the criminal code specifies four discrete mental states that may result in criminal liability, i.e., intent, knowledge, recklessness, or negligence, id. § 76-2-101(1), the language in paragraph (1) seems to suggest that an attempt conviction may be based upon the incomplete perpetration of any of the crimes in the Code.

On the other hand, paragraph (2) of the attempt statute states that the defendant's conduct must be corroborative of his or her "intent to commit the offense." Id. § 76-4-101(2). At

first blush, this provision appears to contradict the broad "culpability" language in paragraph (1). While paragraph (1) seems to allow for any mental state so long as it falls within the "kind of culpability otherwise required" for the underlying offense, paragraph (2) seems to require a mental state of "intent."

However, closer examination indicates that paragraphs (1) and (2) are not contradictory. "Culpability," the term used in paragraph (1), and "intent," the term used in paragraph (2), are distinct concepts. Intent is a mental state. Black's Law Dictionary 415 (5th abr. ed. 1983). Culpability, on the other hand, refers to blameworthiness, id. at 200; 25 C.J.S. Culpability (1966), a value society assigns to particular behaviors that it deems punishable. Culpability is an inclusive term that comprehends action or omissions, the mental state with which they are done, and the circumstances in which the acts or omissions take place. See Wayne R. LaFave & Austin W. Scott, Jr., Criminal Law § 24 (1979) [hereinafter Criminal Law]. Thus, although culpability includes consideration of the actor's mental state, it is a much broader concept than intent. See 25 C.J.S. Culpable (1966) (defining culpability as "deserving punishment . . . or blame or censure," but noting that it does not necessarily connote "guilt," "malice," or "guilty purpose").[3]

With this distinction in mind, we interpret paragraphs (1) and (2) of section 76-4-101. In doing so, we rely on two well-established rules of statutory construction. Cf. Utah Code Ann. § 76-1-106 (requiring terms to be construed according to their fair import). First, specific statutory provisions take precedence over general statutory provisions. E.g., Osuala v. Aetna Life & Casualty, 608 P.2d 242, 243 (Utah 1980). Second, statutory provisions should be construed to give full effect to all their terms. E.g., Shurtz, 814 P.2d at 1112.

Applying these two rules to the attempt statute resolves the apparent contradiction between paragraphs (1) and (2). The more specific requirement of intent in paragraph (2) (i.e., "intent to commit the [underlying] offense") takes precedence over the general culpability requirement in paragraph (1) (i.e., "culpability otherwise required for the commission of the [underlying] offense"). And to give the fullest possible effect to the terms of paragraphs (1) and (2), we construe the culpability requirement in paragraph (1) to refer to the

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[3] We are aware that culpability is sometimes used interchangeably with mental state. However, we think that this usage is imprecise.

attendant circumstances, if any,[4] of the underlying offense and construe the intent language in paragraph (2) to limit the attempt statute to offenses with a mental state of "intent." In other words, attempt can be found for uncompleted offenses that

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[4] "Attendant circumstances" are those circumstances that may be required to be present for criminal liability in addition to the requisite physical conduct, or actus reus, and the mens rea specified for the offense. See Criminal Law § 34, at 237, 240-41. In general, mens rea means "guilty mind," that attribute which, along with physical conduct, was required for criminal liability under common law, see id. § 27, at 191-92, and is now required by statute except for strict liability offenses. See Utah Code Ann. § 76-2-101(1) ("[N]o person is guilty of an offense unless his [or her] conduct is prohibited by law and . . . [h]e [or she] acts intentionally, knowingly, recklessly, with criminal negligence, or with a mental state otherwise specified . . . ."). The mens rea is the mental state required in all homicide offenses for criminal liability. See id. § 76-2-102 ("Every offense not involving strict liability shall require a culpable mental state . . . ."); id. § 76-5-201 ("A person commits criminal homicide if he [or she] intentionally, knowingly, recklessly, with criminal negligence, or acting with a mental state otherwise specified in the statute defining the offense, causes the death of another human being, including an unborn child.").

Occasionally, an offense may require a certain mental state for an attendant circumstance. For example, under section 76-5-202(1)(k) of the current Code, a person is guilty of aggravated murder ("first degree murder" under the 1990 statute) if he or she intentionally or knowingly causes the death of a police officer acting in an official capacity and the person knew or "reasonably should have known" that the decedent was a police officer. Id. § 76-5-202(1)(k). The mens rea element for this offense is intent or knowledge, whereas the attendant circumstance that the decedent was a police officer requires at least a negligent mental state. Some offenses do not have attendant circumstances, such as the intentional or knowing formulation of murder ("second degree murder" under the 1990 statute), which requires only conduct that intentionally or knowingly causes the death of another. Id. § 76-5-203(1)(a). Other offenses that do have attendant circumstances may not require a mental state for one or all of those circumstances. An example of the latter type of offense is the depraved indifference formulation of murder, which requires that the defendant act "under circumstances evidencing a depraved indifference to human life." Id. § 76-5-203(1)(c). The defendant's mental state under this provision is irrelevant to the determination of this attendant circumstance; it refers solely to objective circumstances. Fontana, 680 P.2d at 1045, 1047. See generally Criminal Law § 27, at 194-95.

require "intent," even though those offenses have attendant circumstances that require lesser mental states.

Our construction of Utah's attempt statute finds support in the attempt provisions of the Model Penal Code ("MPC") and the 1971 Proposed Federal Criminal Code ("PFCC"), both of which served as bases for the Utah provision. See State v. Pearson, 680 P.2d 406, 408 (Utah 1984) (per curiam) (noting that the Utah attempt statute was modeled after the MPC version); Loren Martin, Utah Criminal Code Outline 169 (1973) (noting that the Utah attempt statute was modeled after section 1001 of the PFCC); cf. 1 National Commission on Reform of Federal Criminal Laws, Working Papers of the National Commission on Reform of Federal Criminal Laws 351-52 (1970) (relying on the stated purposes of the MPC attempt provision as the current penalogical thinking) [hereinafter National Commission Working Papers].

Both the MPC and PFCC provisions include two phrases regarding the requisite mental states for attempt that are the same as or analogous to the provisions of the Utah attempt statute. One phrase is the "kind of culpability otherwise required" that is also used in paragraph (1) of the Utah attempt statute. The other phrase specifies the mental state necessary for the conduct that constitutes the substantial step, which corresponds to the "intent" requirement in paragraph (2) of the Utah attempt statute. See Model Penal Code § 5.01(1), (2), reproduced in 1 Amer. L. Inst., Model Penal Code and Commentaries 295-96 (1985) [hereinafter MPC Commentaries]; Proposed Federal Criminal Code § 1001(1), reproduced in 1 National Commission on Reform of Federal Criminal Laws, Final Report of the National Commission on Reform of Federal Criminal Laws 6 (1971). The commentaries to the MPC and PFCC attempt provisions indicate that the clause requiring the "kind of culpability otherwise required" for commission of the offense refers to the attendant circumstances of the underlying offense and the requisite mental states for those circumstances. See MPC Commentaries § 5.01, at 301, 303; National Commission Working Papers at 355. In contrast, the commentaries make clear that both the MPC and PFCC attempt provisions require a more culpable mental state than recklessness for conduct that creates the substantial step. The PFCC attempt provision requires intentional conduct, National Commission Working Papers at 354 & n.6, and the MPC attempt provision requires either intentional conduct or the belief that the actor's conduct will result in the proscribed act. MPC Commentaries § 5.01, at 303.

Despite the foregoing support for limiting the Utah attempt provision to offenses requiring intent, the State argues that we should define "intent" in paragraph (2) of the attempt statute broadly to include purposeful intent and "equivalent" mental states, specifically, that required for depraved indifference homicide. The State reasons that this makes sense from a policy standpoint because the culpability of a person

convicted of depraved indifference second degree murder is the same as the culpability of a person convicted of intentional second degree murder. See Standiford, 769 P.2d at 258; Fontana, 680 P.2d at 1045. In short, the State argues that the degree of the murder (i.e., "first" or "second") is a measure of the societal judgment about the criminal's culpability and therefore murders of equal degree should be treated similarly.

Notwithstanding the apparent logic of this argument, the State's suggested interpretation of "intent" in paragraph (2) of the attempt statute is contrary to the definition given to it by the legislature. Section 76-2-103(1) of the Code states that a person engages in conduct intentionally "with respect to the nature of his [or her] conduct or to the result of his [or her] conduct, when it is his [or her] conscious objective or desire to engage in the conduct or cause the result." Utah Code Ann. § 76-2-103(1) (emphasis added). Normally, we presume that when the legislature defines a term of art and later uses that term in the same body of statutes, it intends a consistent meaning. E.g., Cannon v. McDonald, 615 P.2d 1268, 1270 (Utah 1980). Accordingly, the word "intent" as used in paragraph (2) of the attempt statute should be read to mean "conscious objective or desire." This meaning of the word "intent" obviously is distinguishable from knowledge of the proscribed conduct or result, which is the mental state required for depraved indifference homicide.

Moreover, the State's position is inconsistent with our prior decisions. In State v. Bell, 785 P.2d 390 (Utah 1989), we addressed the question of whether there could be attempted felony-murder under subparagraph (d) of the second degree murder statute. Utah Code Ann. § 76-5-203(1)(d) (Supp. 1989) (amended 1991). We said no, reasoning that "[t]he crime of attempted murder does not fit within the felony-murder doctrine because an attempt to commit a crime requires proof of an intent to consummate the crime . . . ." 785 P.2d at 393 (emphasis added).

In two other cases, we considered attempt in the context of Utah's manslaughter statute, which sets out three alternative formulations of manslaughter. Utah Code Ann. § 76-5-205. Under this statute, manslaughter may arise where the actor (i) recklessly causes death, id. § 76-5-205(1)(a), (ii) causes death under the influence of extreme emotional disturbance, id. § 76-5-205(1)(b), or (iii) causes death under circumstances where the actor reasonably believes that his or her conduct is legally justifiable. Id. § 76-5-205(1)(c).

In State v. Norman, 580 P.2d 237 (Utah 1978), we addressed the first two formulations. We held that an attempt cannot be charged where the attempted crime is the form of manslaughter described in subparagraph (a) of the statute because that formulation requires only the mental state of recklessness, whereas "[a]n attempt to commit a crime is an act done with the

intent to commit that crime . . . ." Id. at 239 (emphasis added). Regarding subparagraph (b), we held that attempted manslaughter is possible under this formulation because "the killing may be intentional but due to mental or emotional disturbance on the part of the defendant." Id. at 240 (emphasis added).

We addressed the third formulation in State v. Howell, 649 P.2d 91 (Utah 1982). There we held that attempted manslaughter can be charged for a crime described under subparagraph (c) of the manslaughter statute because the killing proscribed under that provision must be "intentional." Id. at 94 (emphasis added). We again noted that "one cannot be guilty of an attempt to commit a crime unless the necessary mens rea of the completed crime is intentional conduct." Id. at 94 n.1 (emphasis added).[5]

At bottom, the State seeks to replace the word "intent" in paragraph (2) of the attempt statute with, as it says, "intent or a mental state that is equivalent thereto" and to modify or reject the holdings of Bell, Norman, and Howell. Although it may make sense to allow attempt for homicide offenses that are presumably equal in culpability to intentional murder, we believe that the most reasonable approach, in light of the statutory language and our cases, is to read the word "intent" in paragraph (2) of the attempt statute as that word is defined in section 76-2-103(1).

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[5] In State v. Maestas, 652 P.2d 903 (1982), we rejected an argument that the Utah attempt statute required a higher level of "intent" than that required for first degree murder. In so holding, we interpreted paragraph (1) of the Utah attempt statute as making "clear that regardless of any requirements which the common law may impose concerning 'attempt' crimes, Utah law requires only 'the kind of culpability otherwise required for the commission of the [completed] offense.'" Id. at 904 (brackets in original) (quoting Utah Code Ann. § 76-4-101(1) (1953)). Alternatively, we wrote that even if the Utah attempt statute incorporated the common law requirement of intent, the mental state required for first degree murder was sufficient to meet that requirement. Id. at 905.

The first alternative rationale relied on in Maestas is clearly inconsistent with our cases in Bell, Howell, and Norman and with our holding in the instant case. Thus, that portion of Maestas that conflicts with these cases and today's holding is incorrect. However, we note that Maestas is still good law insofar as it authorizes prosecution for attempted aggravated murder under the intentional or knowing formulation of section 76-5-202(1) or attempted murder under the intentional or knowing formulation of section 76-5-203(1)(a).

Clarity is crucial to a just criminal law system. Jurors are instructed to apply the language set forth in our penal statutes to determine criminal liability. Articulating the various mental states required for the various crimes in the Code is difficult enough without giving multiple meanings to the word "intent."

We hold that to convict a defendant of attempted second degree murder, the prosecution must prove that the defendant had a conscious objective or desire to cause the death of another. Because the mental state required for depraved indifference homicide falls short of that intent, the crime of attempted depraved indifference homicide does not exist in Utah.

The order of the trial court denying Vigil's motion to dismiss and amend is reversed.

WE CONCUR:

Gordon R. Hall, Chief Justice

Richard C. Howe, Associate Chief Justice

I. Daniel Stewart, Justice

Christine M. Durham, Justice